

General Information Letter: Illinois has adopted no express policy on the application of *Geoffrey, Inc. v. South Carolina State Tax Commission*.

May 24, 1999

Dear:

This is in response to your letter dated April 27, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

I am a professor of business at xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, Nebraska. As part of a tax research project on nexus issues, I am examining how the decision of the South Carolina Supreme Court in Geoffrey, Inc. v. South Carolina State Tax Commission, 437 SE 2d 13 (S.C., 1993) cert. denied, 510 U.S. 992 (1993), has impacted the policies and/or actions of other state revenue departments. Specifically, I am interested in learning how many states have taken positions consistent with the decision and are now asserting or planning to assert that position in audits and assessments.

I would greatly appreciate it if you would advise me as to what position, if any, your department has taken in relation to the issue of whether the existence of intangible property creates nexus for income or other tax purposes. If regulations or guidelines have been promulgated on this issue, it would be very helpful to me to have a copy of the same.

### Response

The Illinois Department of Revenue has neither issued regulations nor declared any particular new policy in response to the Geoffrey case. In fact, the issue of nexus is not addressed in general terms by statute or regulation in this State. Determinations of nexus are made only within the context of individual audits, where all relevant facts and circumstances of a taxpayer's activities in Illinois can be weighed. The audit decision relies, then, on accepted constitutional due process and commerce clause standards.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp  
Staff Attorney -- Income Tax